



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0372]

RIN 1625-AA00

Safety Zone; Lower Mississippi River, mile markers 94 to 97 above Head of Passes, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent safety zone for the navigable waters of the Lower Mississippi River between mile marker (MM) 94 and MM 97, above Head of Passes. This zone is necessary to provide for the safety of life on these navigable waters during firework displays. This proposed rulemaking would prohibit vessels from entering the safety zone before, during, and after the firework displays unless authorized by the Captain of the Port Sector New Orleans or a designated representative. This proposed safety zone would be enforced only as necessary by the Captain of the Port Sector New Orleans (COTP) through a Notice of Enforcement published in the *Federal Register* and announced through Vessel Traffic Service Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or

before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE
FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2018-0372 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Commander Benjamin Morgan, Sector New Orleans, U.S. Coast Guard; telephone 504-365-2231, email Benjamin.P.Morgan@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector New Orleans
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
MM	Mile marker
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The Coast Guard Captain of the Port Sector New Orleans (COTP) proposes to establish a permanent safety zone on the Lower Mississippi River in order to better provide for the safety of life on navigable waters during firework displays. The COTP has determined that a large and increasing volume of the firework displays occurring within Sector New Orleans’ area of responsibility take place at locations between mile markers (MMs) 94 and 97 above Head of Passes on the Lower Mississippi River. Many

of these events recur annually and are listed in Table 5 of 33 CFR 165.801 titled Sector New Orleans Annual and Recurring Safety Zones. However, a substantial and increasing number of these firework displays are one-time events associated with conventions, weddings, festivals, etc. By creating a permanent safety zone that can be enforced through a notice of enforcement, the COTP would be able to more efficiently provide for the safety of life.

This notice of proposed rulemaking (NPRM) would reduce administrative costs associated with issuing separate proposed rules for each individual recurring safety zone. The number of one-time firework displays occurring in this three-mile stretch of the Lower Mississippi River has increased from approximately 6 or 7 events in the years 2016 and 2017, up to approximately 11 events by April of 2018. In addition, the Coast Guard has not received any comments, objections, or complaints for the previous 22 safety zones established over the past three years. Although the COTP expects the number of firework displays to increase each year, neither the COTP nor this proposed rule control the number of one-time firework displays occurring in any given year. Finally, due to the limited duration of each waterway closure associated with these firework displays, there is very little, if any, impact to vessel traffic on these waters of the Lower Mississippi River. Moreover, the proposed rule would allow vessels to seek permission to enter the safety zone on a case-by-case basis from the COTP or a designated representative.

The COTP proposes this permanent safety zone in order to balance the administrative burden and the needs of the public. The purpose of this rulemaking is to ensure the safety of life on these navigable waters within this three-mile segment of the

Lower Mississippi River before, during, and after firework displays. Potential hazards associated with firework displays include the accidental discharge of fireworks, dangerous projectiles, and falling embers or other debris. This safety zone covers a three-mile stretch of the river that includes several launching locations where firework displays are most commonly located. However, the COTP has determined that potential hazards associated with each individual fireworks display is a safety concern for vessels navigating within a one-mile stretch of the Lower Mississippi River around a particular launch location. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a permanent safety zone between mile marker (MM) 94 and MM 97 on the Lower Mississippi River. While this zone would encompass a three-mile section of the waterway, the COTP would limit the enforcement of the zone only to the areas necessary for the protection of life on these navigable waters before, during, and after the fireworks. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative means any Coast Guard commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans. Persons and vessels requiring entry into this proposed safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM Channel 16 or 67 or by telephone at (504) 365-2200. Persons and vessels permitted to enter the proposed safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated

representative.

In accordance with 33 CFR §165.7, for each enforcement of the safety zone established under this proposed rule, the COTP would publish a notice of enforcement in the *Federal Register* as early as is practicable. The COTP or a designated representative would inform the public of the enforcement area and period of this safety zone through Vessel Traffic Service Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, duration, and location of the safety zone. While this zone would be permanent, it would only be enforced on an as

needed basis to better regulate marine events in the area. This typically encompasses one-hour operations for a one-mile portion of the waterway.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a permanent safety zone on the Lower Mississippi River. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to

which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and Recordkeeping Requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.845 to read as follows:

§ 165.845 Safety Zone; Lower Mississippi River, mile markers 94 to 97 above Head of Passes, New Orleans, LA

(a) Location. The following area is a safety zone: all navigable waters of the Lower Mississippi River, New Orleans, LA from mile marker (MM) 94 to MM 97 above Head of Passes.

(b) Enforcement period. The safety zone established by this section will be enforced only upon notice of the Captain of the Port Sector New Orleans (COTP). In accordance with 33 CFR §165.7, for each enforcement of the safety zone established under this section, the COTP will publish a notice of enforcement in the *Federal Register* as early as is practicable. In addition, the COTP will also inform the public of the enforcement area and times of this section as indicated in paragraph (d) Information broadcasts.

(c) Regulations. (1) In accordance with the general regulations in §165.23, entry into this zone is prohibited to all vessels and persons except vessels authorized by the COTP or designated representative. A designated representative means any Coast Guard commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of Sector New Orleans.

(2) Persons and vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM Channel 16 or 67 or by telephone at (504) 365-2200.

(3) Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(d) Information broadcasts. The COTP or a designated representative will inform the public of the enforcement period of this safety zone through Vessel Traffic Service Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: June 11, 2018

WAYNE R. ARGUIN,
Captain, U.S. Coast Guard,
Captain of the Port Sector New Orleans.

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